

(ii) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) “*Last day*” defined. Unless a different time is set by a statute, regulation, executive order, or judge’s order, the “last day” ends at 4:30 p.m. local time where the event is to occur.

(3) “*Next day*” defined. The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(4) “*Legal holiday*” defined. “Legal holiday” means the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and any day on which the district office in which the document is to be filed is closed or otherwise inaccessible.

(b) *Extending time*. When an act may or must be done within a specified time, the judge may, for good cause, extend the time:

(1) With or without motion or notice if the judge acts, or if a request is made, before the original time or its extension expires; or

(2) On motion made after the time has expired if the party failed to act because of excusable neglect.

(c) *Additional time after certain kinds of service*. When a party may or must act within a specified time after service and service is made under §18.30(a)(2)(ii)(C) or (D), 3 days are added after the period would otherwise expire under paragraph (a) of this section.

[80 FR 28785, May 19, 2015, as amended at 80 FR 37539, July 1, 2015]

### § 18.33 Motions and other papers.

(a) *In general*. A request for an order must be made by motion. The motion must:

(1) Be in writing, unless made during a hearing;

(2) State with particularity the grounds for seeking the order;

(3) State the relief sought;

(4) Unless the relief sought has been agreed to by all parties, be accompanied by affidavits, declarations, or other evidence; and

(5) If required by paragraph (c)(4) of this section, include a memorandum of points and authority supporting the movant’s position.

(b) *Form*. The rules governing captions and other matters of form apply to motions and other requests.

(c) *Written motion before hearing*. (1) A written motion before a hearing must be served with supporting papers, at least 21 days before the time specified for the hearing, with the following exceptions:

(i) When the motion may be heard ex parte;

(ii) When these rules or an appropriate statute, regulation, or executive order set a different time; or

(iii) When an order sets a different time.

(2) A written motion served within 21 days before the hearing must state why the motion was not made earlier.

(3) A written motion before hearing must state that counsel conferred, or attempted to confer, with opposing counsel in a good faith effort to resolve the motion’s subject matter, and whether the motion is opposed or unopposed. A statement of consultation is not required with pro se litigants or with the following motions:

(i) To dismiss;

(ii) For summary decision; and

(iii) Any motion filed as “joint,” “agreed,” or “unopposed.”

(4) Unless the motion is unopposed, the supporting papers must include affidavits, declarations or other proof to establish the factual basis for the relief. For a dispositive motion and a motion relating to discovery, a memorandum of points and authority must also be submitted. A judge may direct the parties file additional documents in support of any motion.

(d) *Opposition or other response to a motion filed prior to hearing*. A party to the proceeding may file an opposition or other response to the motion within 14 days after the motion is served. The

## § 18.34

opposition or response may be accompanied by affidavits, declarations, or other evidence, and a memorandum of the points and authorities supporting the party's position. Failure to file an opposition or response within 14 days after the motion is served may result in the requested relief being granted. Unless the judge directs otherwise, no further reply is permitted and no oral argument will be heard prior to hearing.

(e) *Motions made at hearing.* A motion made at a hearing may be stated orally unless the judge determines that a written motion or response would best serve the ends of justice.

(f) *Renewed or repeated motions.* A motion seeking the same or substantially similar relief previously denied, in whole or in part, must include the following information:

- (1) The earlier motion(s),
  - (2) When the respective motion was made,
  - (3) The judge to whom the motion was made,
  - (4) The earlier ruling(s), and
  - (5) The basis for the current motion.
- (g) *Motion hearing.* The judge may order a hearing to take evidence or oral argument on a motion.

[80 FR 28785, May 19, 2015, as amended at 80 FR 37539, July 1, 2015]

### § 18.34 Format of papers filed.

Every paper filed must be printed in black ink on 8.5 x 11-inch opaque white paper and begin with a caption that includes:

- (a) The parties' names,
- (b) A title that describes the paper's purpose, and
- (c) The docket number assigned by the Office of Administrative Law Judges. If the Office has not assigned a docket number, the paper must bear the case number assigned by the Department of Labor agency where the matter originated. If the case number is an individual's Social Security number then only the last four digits may be used. *See* § 18.31(a)(1).

### § 18.35 Signing motions and other papers; representations to the judge; sanctions.

(a) *Date and signature.* Every written motion and other paper filed with

## 29 CFR Subtitle A (7–1–15 Edition)

OALJ must be dated and signed by at least one representative of record in the representative's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, telephone number, facsimile number and email address, if any. The judge must strike an unsigned paper unless the omission is promptly corrected after being called to the representative's or party's attention.

(b) *Representations to the judge.* By presenting to the judge a written motion or other paper—whether by signing, filing, submitting, or later advocating it—the representative or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceedings;
- (2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *Sanctions*—(1) *In general.* If, after notice and a reasonable opportunity to respond, the judge determines that paragraph (b) of this section has been violated, the judge may impose an appropriate sanction on any representative, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for sanctions.* A motion for sanctions must be made separately